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Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination against Women**
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Item 4 of the provisional agenda
**Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women**

# List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia

**Addendum**

## Replies of Malaysia*

[Date received: 16 November 2017]

Note: The present document is being circulated in English, French and Spanish only.
* The present document is being issued without formal editing.

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**General**

1. Malaysia acknowledges the delay in submitting the States parties third to fifth periodic reports to the Committee and will enhance stakeholders' collaboration for timely submission of future reports. Parliament was not involved in the discussion of the reports before its submission to the Committee because there is no statutory requirement to do so. Malaysia had engagements with the Non-Governmental Organizations (NGOs) in the process of preparation of the report. The Convention has been translated to several local languages. The Committee's General Recommendations (GRs) have not yet been translated into the local languages. However, Malaysia has taken proactive steps in discussing the GRs at the capacity-building- programmes on the CEDAW for lawmakers, judicial and legal service officers, law enforcement officers and NGOs.

**Constitutional and legislative framework**

2. There are no cases to date on indirect discrimination or discrimination by private actors as defined and prohibited in line with articles 1 and 2 (b) of the Convention and with Sustainable Development Goal 5, target 5.1. Malaysia through the Ministry of Women, Family and Community Development (MWFCD) had organized a workshop on the drafting of a gender equality bill with the objectives to (a) establish the rationale for a Gender Equality Act in Malaysia; and (b) create an understanding on the provisions of the proposed Gender Equality Act. The workshop was held in Putrajaya on 30 August 2017. Further workshops will be organized following this workshop, including to engage other relevant government ministries and agencies as well as other relevant stakeholders. The workshop also took into consideration the decision in *AirAsia Berhad v. Rafizah Shima Bt Mohamed Aris*.

**Reservations**

3. Malaysia reiterates its commitment in upholding and implementing its current legal framework and policies pertaining to matrimony and family on the basis of equality and without distinction or discrimination between men and women in both its civil and Syariah legal systems. Notably, Malaysia maintains two (2) parallel family legal systems, based on English common law and Syariah law (the divine law of Islam) respectively. Malaysia reiterates that its reservations on articles 16(1) (a), (c), (f) and (g) of CEDAW fall within the ambit of Islamic Law or Shari'a (the divine law of Islam), which includes *siasah shar'iyyah* (public policy).

4. The Conference of Rulers is constituted pursuant to clause (1) of article 38 read with section 1 of Fifth Schedule of Federal Constitution (FC). Based on these provisions, the Conference of Rulers consists of Their Royal Highnesses the Rulers and the *Yang di-Pertua Negeri* of States not having Rulers. Thus, the composition of the Conference of Rulers is based on legal requirements, and not gender based. Further, the Conference of Rulers is not the final authority to approve any proposed amendments to Syariah law as it is within the power of the respective Rulers in each State as provided for under subsection 11(1), Part 1 of Eighth Schedule of FC. According to clause (4) of article 38 of FC, only laws directly affecting the privileges, position, honours or dignities of the Rulers need to obtain the consent of the Conference of Rulers.

5. The general legal enacting process in Malaysia is the Bills will be tabled in Parliament or the State Legislative Assembly respectively. If the Bills are passed by Parliament, the Bills will be sent to *Yang di-Pertuan Agong* for His assent, whereas the Bills passed by the State Legislative Assembly will be sent to the Rulers and the

*Yang di-Pertua Negeri* respectively for their assent. Hence, the Conference of Rulers has no final authority to approve any proposed amendments to Islamic laws.

6. Therefore, the statement that the Conference of Rulers has the final authority to approve any proposed amendments on Islamic laws are unfounded.

**Access to justice**

7. As part of the Malaysian Government's initiatives to transform its legal aid services, Parliament has recently passed the Legal Aid (Amendment) Bill 2017 (Bill). One of the objectives of the Bill is to revise the means to introduce a more practical approach to determine a person's eligibility for legal aid. The Bill is expected to streamline the grant of legal aid service to low income earners, irrespective of race and gender, who are under the Government's special aid programmes. The Legal Aid Department of Malaysia (LAD) discharges its duty in accordance with the Legal Aid Act 1971 that does not discriminate between men and women. Therefore, all forms of assistance given including the legal awareness programmes are non-gender bias in nature. However, based on the statistic as appended herewith, it is clear that the majority of LAD clients are women. In this regard, women are expected to gain more from the amendments.

8. With regard to measures to enhance legal awareness, the LAD has been actively involved in legal aid awareness programmes through its legal aid clinics, collaborations with the Government agencies, public lectures, publication and distribution of brochures as well as appearances on national television and radio. These programmes, particularly the legal aid clinics conducted on monthly basis by its district branches, have immensely benefitted those in the rural areas in terms of legal education and access to justice.

9. The legal aid assistance is also available to non-citizens regardless of their gender through court-assigned counsels in capital punishment cases, the National Legal Aid Foundation for minor offenders and the NGOs in all other cases.

10. The Courts also play a significant role in providing access to justice *viz* providing legal representation to unrepresented accused persons in death penalty cases only; irrespective of the said accused persons' gender, ethnicity, religion and nationality. For those purposes, the courts are accorded with statutory power[1] to appoint counsel to represent a party in a court or commonly known as the Court Assigned Counsel scheme. The Court Assigned Counsel scheme has a long standing history dating back to the pre-World War II era in which it was set up by the British in Malaya. At present, this is under the purview of the Chief Registrar of the Federal Court of Malaysia which only offers representation to accused persons who cannot defend themselves in capital offence cases.[2] Such a scheme corresponds to the principle of equal access to justice under article 8 of the FC as well as sections 172B and 255 of the Criminal Procedure Code that grants the accused the right to be defended. It is worth noting that parties enjoying legal services under the Court Assigned Counsel scheme are not required to pay any legal fees. However, the responsibility to pay the appearing counsel is borne by the judiciary.[3] The Chief Registrar's office has the responsibility to issue and constantly review Practice Directions on guidelines, procedures and responsibilities of Court Assigned

[1] Rule 66 of the Court of Appeal Rules 1994 and Rule 96 of the Federal Court Rules 1995 provide for guidelines to the said "Court Assigned Counsel" scheme

[2] Tun Ariffin Bin Zakaria, "Fostering an Efficient and Competent Legal Profession to Support the Court Development of Pro Bono Civil and Criminal Programs: Malaysian Perspective", Conference of Chief Justices of Asia and the Pacific, 2013.

[3] Ibid 2

Counsel.[4] The latest Practice Direction on this matter was issued on 12 May 2017 which provides a comprehensive outline on qualification and registration of a Court Assigned Counsel as well as the amount of fees payable to the counsel.[5]

11. It should be emphasized that Malaysia does not recognize "refugees" and we are not a party to the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967. Nonetheless, the labour legislations under the purview of the Ministry of Human Resources (MoHR) provide protection for local workers and documented migrant workers. This position is similar for all notwithstanding ethnicity, gender, creed, religion and nationality.

**National machinery for the advancement of women**

12. The challenges in the implementation of the National Policy on Women and its Action Plan (2009–2015) in gender mainstreaming is not seen as a national issue and there is a common perception among the public at large that gender mainstreaming is the sole responsibility of the national women machineries, i.e. MWFCD. The existing mechanisms are not working well due to lack of commitment and level of comprehension in all government agencies pertaining to gender mainstreaming and all related matters to gender, lack of institutional mechanisms including training in the government to advice other agencies, monitor, track and evaluate gender mainstreaming and gender mainstreaming programmes. Currently, MWFCD and United Nations Development Programme (UNDP) has undertaken a joint project to strengthen the implementation and monitoring gender mainstreaming in the 11th Malaysia Plan (2016-2020) by reviewing the effectiveness of the National Policy on Women and National Action Plan for the Advancement of Women.

**Temporary special measures**

13. The roles and status of women in Malaysia has undergone a profound change in the past six decades in all areas including in the areas of decision-making especially in the corporate sector. Based on statistics from the Malaysian stock exchange or the Bursa Malaysia, as of 30 September 2017 the number of women placed as board of directors in the Top 100 Public Listed Companies (PLCs) by market capitalization in Bursa Malaysia is 19.1 per cent exceeding the 18.0 per cent target set by the Government for 2017. While the public sector had achieved the 30 percent women in decision making positions at 35.8% (2016), the women representation in the private sector remains a challenge despite the encouragement by the Government. The Prime Minister of Malaysia had made an announcement that all PLCs which fail to have any women on their boards of directors will be "named and shamed" in a list to be published by the Government in 2018.[6]

14. The joint project between MWFCD and UNDP (para 12) emphasises on four (4) important outputs namely:

(a) Review of the effectiveness of the National Policy on Women and National Action Plan for the Advancement of Women (10th Malaysia Plan: 2011-2015);

(b) Gender Mainstreaming Framework and Policy Recommendations for the Implementation of 11MP;

[4] Ibid 2

[5] Practice Direction No. 1/ 2017, Chief Registrar's Office, Federal Court of Malaysia —Guidelines, Procedures and Responsibilities of Court Assigned Counsel for Cases Punishable by Death Penalty

[6] Speech by Prime Minister during InvestKL event on 25 July 2017

(c) Malaysia Gender Gap Index Report;

(d) Institutional Capacity-Building: Gender Mainstreaming and Monitoring.

15. Item (d) focuses on providing capacity-building training for senior level management of MWFCD, related partners and gender focal points besides making sure the academic institutions focus on gender issues, encompassing gender analysis, gender based budgeting, gender disaggregated data and developing a roster of gender experts from public sector, civil society, academia and private sector as well as to institutionalize training.

**Stereotypes and harmful practices**

16. In Malaysia, both men and women are involved in educating and raising their children. Traditionally, this responsibility falls under the women in the upbringing of children but men are encouraged as well. However, the current labour laws only provide maternity benefits to women regardless of their salary. MoHR will take into consideration to include paternity leave in its labour laws in the future.

17. Since the amendment of Standing Order 36(4) of the House of Representatives in November 2012, from its record, there were no members of Parliament who have been sanctioned or referred to the Committee of Privileges for violation of the Standing Order 36(4).

18. Generally, Malaysia practises Islam according to Sunni Islam based on Syafie Sect. Based on this sect, the 86th *Muzakarah* (Conference) of the *Fatwa* Committee National Council of Islamic Religious Affairs Malaysia held on 21 to 23 April 2009 that discussed female genital mutilation. The Committee had decided that female circumcision is part of Islamic teachings and it should be observed by Muslims. It also pays attention to the safety of its people, and circumcision can be exempted if the practice brings harm to the person. As far as the majority of the jurists' views are concerned, the Committee has decided that female circumcision is obligatory (*wajib*). However, if the circumcision is deemed harmful on any individual then it must be avoided.

19. To ensure proper female circumcision procedure, the Ministry of Health (MoH) had conducted several task force meetings, of which members comprised of medical professionals, religious body and NGOs to discuss the best approach to fulfil religious obligations and the same time the practice that is to be practised does not amount to mutilation. The outcome was a publication of the "Guideline on Female Circumcision Procedures for Muslim Women". It stated that only accredited medical professionals will be medically privileged to perform the procedure. This procedure then has been monitored by MoH in which all states must submit the *reten* on the practice of the circumcision (inspection of the genitalia of Muslim baby girl, aged of 18 month who come to the clinic to get their DTAP booster vaccination) and to report of any form of FGM detected during the antenatal, intra natal and postnatal examination of women by obstetrician. This information has since been collected in 2015. 83-85% of the Muslim baby girls have been circumcised by medical professionals in private clinics without any complications.

20. The law has set out that the minimum age to marry; that a man must attain the age of 18 and a woman must attain the age of 16 and above (section 8 of the Islamic Family Law Act (Federal Territories) 1984). However, the section also puts an exception that where it involves parties under the stipulated age, such marriage can only be solemnized subject to permission by the Syariah Court (section 18 of the Islamic Family Law Act (Federal Territories) Act 1984. The parties in order to obtain such permission must prove to the court circumstances or reasons that necessitate such marriage and the court has the duty to properly scrutinize and

examine the application before deciding whether to grant the permission. In order to make sure that the court observes the duty, the Department of Syariah Judiciary Malaysia that coordinates Syariah Court has taken up certain approaches:

(a) Organizing seminars and workshops to train judges and Syariah officers when handling cases of child marriage;

(b) Carrying out of courses and discussions on the issue of child's marriage;

(c) Establishing strict rules in the process of handling trial proceeding of application of child's marriage;

(d) Forming a Standard of Operation (SOP) on application filed under section 18 of the Islamic Family Law Act (Federal Territories) Act 1984 as a reference for Syarie judges.

21. Due to the setting up of strict regulations and procedures by the Syariah law of the country, many applications for child's marriage are rejected by the Syariah court, due to:

(a) Failure of the applicant bridegroom to prove that he can sustain and maintain the bride should he be allowed to marry;

(b) Report on the applicants' conduct obtained from authorized body proved that they are morally unsatisfactory;

(c) Inadequacy of applicants' knowledge on the religion and, their duties and responsibilities as a spouse in a marriage.

22. The Syariah law relating to solemnization of marriage is under separate jurisdiction of different state and such law is formulated based, not only on the Islamic law, but takes into consideration local circumstances.

**Violence against women**

23. The data on domestic violence including sexual assault cases and reported rape cases that have been brought to court is appended in annex 1. Based on the Domestic Violence Act, victims of domestic violence will be granted with the Interim Protection Order (IPO) for a period of 21 days. In 2016, only one (1) case on marital rape was charged in court. Furthermore, section 426(1A) which is read with section 183A of the Criminal Procedure Code (CPC) provides the remedies to victims of sexual offences.

24. It must be noted that the issue of permitting the alleged rapists to marry their underage victims for Muslims is slightly complex. The Syariah Courts try not to interfere with the personal issues of individuals unless it could be shown that the marriage was entered into coercively, under duress and not freely. The matter falls within the purview of the Shariah Law,[7] more specifically the Muslim Family Law Act or Enactment of each State who must decide whether the marriage is legal or otherwise. The Civil Courts in Malaysia do not have the jurisdiction to interfere with the permission to solemnize a marriage involving anyone that has fulfilled all requirements stipulated under the respective Muslim Family Law Act or Enactment of each state such as that mentioned in paragraph 19 above. Nonetheless a consensual marriage between the alleged rapists and their underage victims in accordance with the Shariah Law will not render any rapist innocent of the crime of rape committed under section 375 of the Penal Code. The Criminal Courts still have jurisdiction to proceed with the criminal case of rape notwithstanding the marriage. One such case that upholds this position is the case of Riduan Masmud aged 44 who

[7] Item 1, List II of the Ninth Schedule of the Federal Constitution

is currently serving a 12-year jail term after found guilty by the Sessions Court in Sabah in 2014 and of which upon appeal, affirmed by the High Court of Sabah in 2015 of raping an underage victim of 13 years old whom he married during trials. This case was later brought on appeal to the Court of Appeal. The Court of Appeal rejected the appeal and upheld the decision of the High Court.[8]

25. The Penal Code has been amended to insert section 375A which states that "Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years".

26. The Domestic Violence Bill (Amendment) 2017 was tabled and passed in the House of Representatives on 25 July 2017 and at the Senate on 14 August 2017. The Bill obtained its Royal Assent on 15 September 2017 and was published in the *Federal Gazette* on 21 September 2017. This Act shall come into effect after the Honourable Minister of Women, Family and Community Development determines the effective date of the Act.

27. The Domestic Violence Act 1994 only protects victims in valid marriages. Intimate partner violence is dealt with under sections 323, 324, 325, 326 of the Penal Code and other related provisions that are related to violence.

28. On the issue of whipping of women, as far as Criminal Court is concerned, it upholds the provision in section 289 of the CPC that prohibits whipping of women. The Syariah Courts are, however, empowered to execute all Syariah criminal offences punishable with whipping not exceeding six (6) strokes based on prescribe rules on Syariah whipping. The method of whipping is different from the civil whipping. The whipping shall be administered in accordance with the existing Syariah procedure on whipping provided under the Syariah Criminal Procedure (Federal Territories) Act 1997 [*Act 560*] and other State laws. Section 125 of Act 560 provides the procedure of whipping. Some of the procedures are; before execution of the sentence, the offender shall be examined by a Government Medical Officer to certify that the offender is in a fit state of health to undergo the sentence; the person shall use the whipping rod with average force without lifting his hand over his head so that the offender's skin is not cut; whipping may be inflicted on all parts of the body except the face, head, stomach, chest or private parts; and if the offender is pregnant, the execution shall be postponed until the end of two (2) months after delivery or miscarriage, as the case may be.

29. The punishment imposed is intended to educate rather than to punish the offender. The Syariah Court does not override section 289 of the CPC in executing whipping sentence on female criminal. This is due to the fact that the whipping under section 289 of the CPC is altogether different from the whipping under the Syariah law as provided under section 125 of the Syariah Criminal Procedure (Federal Territories) Act 1997.

**Trafficking and exploitation of prostitution**

30. MWFCD provides protection and rehabilitation for the trafficked persons. A shelter home declared as a place of refuge functions also assists the recovery of victims physically and psychologically. Basic facilities and necessities are available for the victims' comfort. Victims of trafficking in persons' recovery in the shelter homes are the primary task in the process of prosecution. This is because, in a lot of cases, victims of trafficking in persons are found to be severely traumatized and require help in order to recover from the ordeal. MWFCD has initiated collaboration

[8] *Public Prosecutor v Ridhuan Masmud, Appeal No. S-09-(S)-21-01 2015* (Court of Appeal).

with the International Organization for Migration (IOM) on psycho-social assessment at all government shelters and some recommendations for improvement. IOM has assisted MWFCD in conducting several training programmes for protection officers which focuses on direct assistance of victims and psycho-social and reproductive health of the victims. IOM also shared its expertise to value add the existing Client Management System (CMS) document for victims so that it will be in line with international standards. The shelter homes provide the following basic necessities:

(a) Essential facilities and recreational facilities which includes reading materials;

(b) Counselling, vocational skills training and medical treatment;

(c) Psycho-therapy sessions conducted once a week;

(d) Programmes such as cooking classes, English classes and dance classes.

31. The Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) [Act 670] came into force in entirety on 28 February 2008 covering all aspects on offences that relates to trafficking in persons, protection and support of trafficked persons and offence of trafficking in persons. The main source of reference for ATIPSOM Act 2007 is based on the international instruments, i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol).

32. Identification process may be varied to identify Possible Victims of Trafficking (PVOTs) depending on where the PVOTs being located. Preliminary questions and TIP indicators are the main methods to identify PVOTs. For those who have been positively identified as PVOTs during the preliminary questions, they will be rescued and given IPO for a period of 21 days. The victims are then placed in shelter homes for investigation process. Upon completing IPO within 21 days, the victim will be given Protection Order (PO) for the period of 90 days for the support and protection from MWFCD. Victims of Trafficking (VOTs) are given immunity under section 25 of the ATIPSOM Act relating to Immigration Offences and procurement or possession of any fraudulent document. Under section 43 of the ATIPSOM Act, the Protection Officer has the responsibilities to assist and support VOTs during the investigation and court proceeding. Victims that are under PO will not be given any residence permits. But they are entitled to move and work freely after getting approval from the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants through National Strategic Office to the Council (NSO MAPO) under the Ministry of Home Affairs (MoHA). Victims will be provided with special passes from the Immigration Department. In 2016, the number of cases received was 456, i.e. 131 cases were prosecuted, 100 cases were convicted and the rest are still under investigation.

33. VOTs enjoyed freedom of movement and freedom to work in Malaysia based on their willingness and approval from the NSO MAPO. The Regulations for freedom to move freely and to work and Regulations for payment of allowance to VOTs which provides monthly subsistence, i.e. estimated USD 28[1] to VOTs were published in the *Federal Gazette* on 4 May 2016 and 1 March 2017 respectively.

34. MoHA, through the Royal Malaysia Police (RMP), plays a vital role to rescue, to arrest, to investigate and to prevent TIP activities. TIP Prevention is not solely under RMP but a collective effort from various Ministries and NGOs.

[1] The conversion rate of Malaysia Ringgit (MYR) 120 per month is calculated based on the current rate (MYR 1 = USD 0.24) as of 8 November 2017.

35. Section 372 of the Penal Code (PC) states that whoever exploits any person for purposes of prostitution shall be punished with imprisonment for a term which may extend to fifteen years and with whipping, and shall also be liable to fine. Section 372A of the PC states that any person living on or trading in prostitution shall be punished with imprisonment for a term which may extend to fifteen years and with whipping, and shall also be liable to fine. Section 372B of the PC states that whoever solicits or importunes for the purpose of prostitution or any immoral purposes in any place shall be punished with imprisonment for a term not exceeding one year or with fine or with both. Section 373 of the PC states whoever keeps, manage, assist or owned of any place, let the place or any part of the place to be used as a brothel or permits such place to be used as brothel shall be punished with imprisonment which may extend to fifteen years, and shall also be liable to fine.

**Participation in political and public life**

36. As of 31 December 2016, 47.2% (661 out of 1,399) of officers in the Malaysian Foreign Service are women as compared to 37.7% (176 out of 467) in 2012. Out of this figure, 5.4% (36 out of 661) hold positions at decision making levels. 73 Malaysian women are currently attached to various international organizations including the United Nations (UN) bodies, Organization of Islamic Cooperation (OIC) and International Non-Governmental Organization (INGO).

37. The number of women from marginalized group—ethnic minority women, indigenous women and women with disability in judicial system is appended in annex 2.

38. At present, there are women representatives in Parliament, i.e. 24 women representatives in the *Dewan Rakyat* and 12 women representatives in the *Dewan Negara*. One (1) woman with disabilities has been appointed as the Senator and is serving her second term in *Dewan Negara*. A woman from ethnic minority group was appointed as the Senator from 2005 to 2008 and an indigenous woman was appointed as the Deputy Speaker of *Dewan Negara* from 2012 to 2016. Election or appointment of women including from marginalized groups, such as ethnic minority women, indigenous women and women with disabilities to Parliament is decided by the respective parties they represented for in *Dewan Rakyat* and elected by their respective State Legislative Assemblies or appointed by *Yang Di-Pertuan Agong* for *Dewan Negara* as provided for in article 45 (1) and (2) of the FC. The percentage of women appointed as the Senator in *Dewan Negara* reached to 33 per cent in 2004.

**Nationality**

39. The reservation to article 9 (2) is based on the policy decision of the Government. Children born overseas to Malaysian mothers who are married to foreigners may acquire citizenship by way of registration under article 15 (2) of the FC. If the child is above the age of 18 years old, he/she needs to take the oath set out in the First Schedule to the FC as required by article 18 of the FC. Nevertheless, a child born to a mother who is married to a foreigner may also be registered as a citizen in special circumstances as the Federal Government thinks fit under article 15A, FC. What constitutes special circumstances under article 15A is a matter of policy consideration within the sole discretion of the Federal Government as held in the case of *Yu Sheng Meng (Suing through next of kin, Yu Meng Queng) v Ketua Pengarah Pendaftaran Negara & Ors. [2016] 1 CLJ 336*.

40. There is no legal provision which confers citizenship automatically by way of law to a male foreign citizen married to a Malaysian woman. The foreign citizen husband however may apply to become a Malaysian citizen by way of naturalization as provided under article 19 of the Convention upon meeting certain conditions

provided therein. Among the requirements to be fulfilled are that the person has been residing in Malaysia for the required period (aggregate of not less than 10 years in the 12 years immediately preceding date of the application, including 12 months prior to the date of application) and, if the certificate of naturalization is granted, intends to do so permanently, is of good character and has an adequate knowledge of the Malay language. The requirement to take an oath as set out in the First Schedule to the FC is applicable to such cases.

41. The Long-Term Social Visit Passes for foreign women who are married to Malaysian men fall under the Immigration Act 1959/63 which states that foreign husbands/wives to Malaysians can be given the Long-Term Social Visit Pass for a period of five (5) years on condition that they comply with all the requirements stipulated under the Act.

**Education**

42. The composition of the number of women in leadership roles in both primary and secondary education as well as the public universities are appended in annexes 3 and 4 respectively.

43. The Ministry of Higher Education (MoHE) advocates the appointment of top positions in all its organization/agencies based on merits with transparent processes including equal opportunity being provided to all men and women to fill in top leadership positions in HEIs. However, there is a significant difference in the percentage between men and women holding leadership positions at present. There is a higher percentage of men being appointed to the leadership positions in public universities. As an effort to promote greater gender equality, MoHE has produced a guidebook entitled University Transformation Programme (UNiTP) Green Book on Enhancing University Board Governance and Effectiveness as an initiative to enhance the procedures and regulations in selecting the best candidate for the top positions irrespective of the gender among others criteria.

**Health**

44. According to the Penal Code, abortion is legal if it is done in good faith by a registered medical practitioner in situation where there is risk to the life of the pregnant women, or injury to the mental or physical health of the pregnant woman. In cases of rape, incest or severe foetal abnormality, abortion is legal if it meets the above conditions as stipulated by law.

45. The adolescent birth rate, as measured by the age specific fertility rate among adolescents aged 15–19 years have declined from 28/1000 (1991) to 12/1000 (2015) (Department of Statistics 1991, 2015). This decline reflects the efforts that have been done by various stakeholders in dealing with teenage pregnancy. MoH provides comprehensive health care services for all age groups and gender, including provision of contraceptive and sexual and reproductive health services which are integrated in the primary health-care facilities nationwide at minimum cost of registration fee. Almost all methods of contraception are available and accessible free of charge at these facilities.

46. For women and girls in detention, health services are given regularly as needed. Mobile team services are available at all temporary detention depots, while in prisons health services are delivered via prison clinics. For lock-ups, they will be brought to the nearest clinics or hospitals for any medical problems. If any of the women or girls needs to be referred, they will be facilitated accordingly to the nearest health clinics or hospitals. The health services will include both maternal and child health and outpatient cases.

47. Health screenings of the detainees are conducted by Depot's Medical Assistant and will be referred to Government hospital/clinic for further medical treatment. The same treatment also applied to women prisoners. Any further medical assistant detected will be referred to Government hospital/clinic. As for VOTs, they are not detained in detention centres but they are protected under ATIPSOM Act 2007 and placed in a shelter home for protection and rehabilitation services. VOTs are given necessary medical assistance by the Government, NGOs and international organizations. There are seven (7) shelter homes under the supervision of MWFCD for VOTs.

**Rural women and disadvantaged groups of women**

48. The Malaysian Communications and Multimedia Commission (MCMC) has organized various educational, awareness and advocacy programmes including digital inclusion, digital leadership and internet etiquette. The objective of the programme is to promote understanding and implementation of sound security measures for users including women and children. In general, programme *Pusat Internet 1 Malaysia* (PI1M) has benefitted the society especially women through the provision of free ICT, multimedia and entrepreneurship training courses such as:

(a) Intel Learn Easy Step and Intel Entrepreneurship Basic Module;

(b) Basic Internet Classes (Emails, YouTube and Google Maps);

(c) Microsoft Office and Internet (Microsoft Office: Word, Excel & Publisher);

(d) Computer Application Class (Adobe Photoshop, Illustrator and Movie Maker);

(e) E-Commerce Application Class (e-Government, e-Learning and e-Commerce);

(f) Soft Skills (Presentation/Resume Writing);

(g) Multimedia (Video Making/Digital Photography);

(h) Basic New Media (Facebook, blog, website).

49. PI1M connects micro entrepreneurs in the rural areas who are mostly women to develop their digital entrepreneurship know-how. This will contribute to the growth of Malaysian digital economy. As of October 2016, 205,315 participants have participated in the PI1M programme. Out of 205,315 participants, 123,162 participants participated in the entrepreneurship module and 82,153 participants participated in other modules. And, as of May 2017, there are 813 PI1M throughout the country and another 44 are to be completed by the end of 2017.

50. Apart from PI1M, there is another initiative called *Program Skrin ke Skrin (PSKS)* for women entrepreneurs in the rural areas. The initiative is to facilitate them to produce quality videos and develop websites to promote their products. For instance, the success story of Puan Kabilah Hassan, a seaweed entrepreneur from Kunak, Sabah. She promotes her product online and her income has risen from MYR 450/month to MYR 20,000/month.[10]

51. MCMC also emphasises on women's interests in general. All broadcasters must observe content requirements and promote local culture and identity in order to apply for the Content Application Service Provider License (Individual) (CASP-I). The content code of Communications and Multimedia has outlined:

[10] The video is available from www.youtube.com/watch?v=5NAFblbO-Cw.

(a) Advertisements must not portray women as sex objects;

(b) Advertisements must show positive image of the women.

52. The content must go through the Malaysian Censorship Board prior to being broadcasted on television and radio. This is to ensure the content does not violate Malaysian ethics and cultures.

53. With regard to health, Malaysia recognizes and provides different and specific health needs of population groups, from new born to the elderly with high priority to women of reproductive age, children and persons with disabilities (PWDs). Health policies and programmes are developed to provide services to address health needs of all. These services are provided through a network of static clinics and hospitals complemented by mobile services through land, air and riverine.

54. The National Policy on Social and Reproductive Health Education and its Plan of Action launched in 2009 and adopted in 2010 had pave the way for reproductive health education in school, out-of-school and most at risk adolescent. Four (4) strategies to achieve the objectives of the policy: advocacy, human capital development, research and development, and monitoring and evaluation have been identified together with specific activities that will be carried out by relevant agencies and interested stakeholders. The objectives of this policy are to develop individuals who are knowledgeable and have a positive attitude towards social and reproductive health. To be effective, these programmes are culturally appropriate and sensitive to the needs of adolescent and youth. In 2017, the 17 kafe@TEEN Adolescent Centers managed by the National Population and Family Development Board (NPFDB) have been providing free reproductive health and social services to young people aged 13-24 years of age. Since its inception in 2005, a total of 434,541 young people have participated in the kafe@TEEN education and skill building programmes while 38,660 young people have utilized the reproductive health and counselling services.

55. Healthy Living Skills Module *(Modul Kesejahteraan Hidup)* developed by NPFDB to cater the reproductive health and social education of young people aged 18 years old and above. This module was integrated into the National Service Training Programme (PLKN) June 2011 till January 2015 with 267,121 national service trainees were trained in this programme at 81 National Service Training camps.

56. I'm in Control Module *(Modul Cakna Diri)* for adolescents and parents were developed in collaboration with United Nations Population Fund as a pilot project entitled Upscaling kafe@TEEN Programme in 2009. This module had been successfully pilot-tested in five (5) selected secondary schools in Malaysia from 2009 till 2012. The module has since been implemented under the *Pekerti a Community* programme throughout Malaysia. 5,935 adolescents and 1,566 parents attended this programmes from 2014 till 2016.

57. Economics empowerment for women under the Ministry of Rural and Regional Development (MRRD) and its agencies such as KEMAS, JAKOA, FELCRA, KEJORA, KEDA, KESEDAR, KETENGAH and MARA provides various programmes like entrepreneurship programme, formal/non-formal education and skills programmes.

(a) Entrepreneurship programmes—Smallholders' Women's Group (PWPK) under Rubber Industry Smallholders Development Authority (1234). In 2016, a total of 820 PWPK groups consist of 12,300 women. These groups are able to generate income amounting to RM32.45 million;

(b) FELCRA Dynamic Women's Group (WADIRA). In 2016, there were 83 branches nationwide with a membership of 17,562 women who are actively

involved in cottage industries/economic projects, i.e. food processing, agriculture, sewing, handicraft, homestay management, salon and spa;

(c) Rural Economy Financing Scheme (*Skim Pembiayaan Ekonomi Desa* or SPED). SPED is a soft loan scheme to help rural entrepreneurs to start a business or to enhance or upgrade their business. In RMKe-10, 592 women entrepreneurs have benefitted from this scheme that amounted to a total of RM48,418,490.56;

(d) Majlis Amanah Rakyat (MARA) provides business premises to rural entrepreneurs who cannot afford to own premises to operate their business. In 2016, there were 2016 womens participated in MARA business premises;

(e) Non-formal education. The Department of Orang Asli Development (JAKOA) emphasizes the mother's role in child nurturing. Orang Asli mothers are given the knowledge to provide proper care to their children as these children need enrichment to enable them to develop especially intellectually. A programme called *Ibu Penggalak Pembaca* which can be literally translate as the 'Mother as a Reading Motivator' was specifically developed for this purpose. The objectives of this programme is to give awareness to mothers in Orang Asli community the importance of education; cultivate a reading habit; strengthen family bonding and a love for knowledge among the Orang Asli family members. As of 2017, JAKOA has established 25 *Ibu Penggalak Pembaca* centres. The centres employ 81 caregivers and consist of 383 children aged 2–4 years old. These care-givers are the mothers themselves and they are paid monthly allowance;

(f) Programmes offered by the Department of Community Development (KEMAS) are IT literacy, functional literacy, skills/vocational training, family well-being and community libraries. The programme indicated participation of 756,428 rural women between the year 2011 and 2016;

(g) Skills programmes. In order to improve the managerial skills among rural entrepreneurs, MRRD through MARA provides advisory services and training that focused on upgrading and up-scaling of rural enterprises. In 2016, there were 19,388 women joined the entrepreneurship courses by MARA.

**Women migrant workers**

58. MoHR has published a book on Guidelines and Tips for Employers of Foreign Domestic Helpers which provides information regarding laws and practices related to the employment of foreign domestic helpers in Malay and English languages. The Ministry has planned to publish it in Mandarin and Tamil in the near future. Besides, the Ministry also plan to make the book available to foreign domestic workers coming to Malaysia. For this purpose, the Ministry has taken the initiative to seek the assistance of the sending countries to translate the book to the official language of the sending country to enable prospective employees to know their rights.

59. The Government does not intend to revise the policy which prohibits domestic workers from getting pregnant on the basis that their contract of service would normally be for two (2) years. Since the workers are here for the sole purpose of employment, they should abstain from being pregnant during the period they are working in this country. Therefore, by making the book available to prospective foreign domestic workers coming to this country, they will be aware of their rights as according to Malaysian laws. If there are any case of abuse on women migrant domestic workers by their employers, such as non-payment of salary, they may file a report with the Department of Labour to seek redress on the matter. Should there be an indicator of forced labour, then the matter may be investigated under the Anti-Trafficking and Anti-Smuggling of Migrants Act 2007. The data on the number

of women migrant workers hired for domestic work according to nationality and data on number of migrant works according to sector are appended in annexes 5 and 6 respectively. MoHR will take into consideration to disaggregated by age in the future.

**Refugee, asylum-seeking and stateless women**

60. The data on women and girls who were placed in the Immigration Detention Centres are illegal immigrants is appended in annex 7. They will be released from the depot only after United Nations High Commissioner for Refugees (UNHCR) verified that they are qualified for international protection under the Status of Refugee Convention 1951/Protocol 1967. Once given the UNHCR cards, they deserve some form of protection namely freedom of move..ient, access to basic education provided by UNHCR, NGOs or any third parties, access to public and private health-care and freedom of religion. Moreover, only female officers will handle the women detainees as clearly stated in the depot's SOP. The detention centre is monitored directly by The Human Rights Commission of Malaysia (SUHAKAM) and Enforcement Agency Integrity Commission (EAIC) to provide healthy diet recommended and approved by MoH; to allow medical check-up at the government hospital/clinic to all of detainees subject to the recommendation of depot's Medical Assistant; pregnant women in Detention Centre is allowed to have monthly medical check-up to ensure mother and the baby are healthy; and to provide personal hygienic toiletries to the detainees.

61. MoHA will collaborate with UNHCR to verify the refugee status of the detainees through interview session and consequently resettled those to the third country manage by UNHCR/NGO. During these processes, the non-refoulement principle has always been observed.

62. MoHA conducts training, dialogue session and information sharing regularly to ensure officers is well equipped with the law/current issues/SOP.

**Lesbian, bisexual and transgender women and intersex persons**

63. Malaysia stands by the Beijing Declaration and Platform for Action 1995 on the issue of gender. The Government upholds the rights and dignity of all persons in Malaysia in accordance with the law. If anyone is discriminated for any reason, then the normal process of law will be exercised after the report of the discrimination has been investigated and the authorities have concluded their investigations. While Malaysia does not recognize lesbian, bisexual, transgender and intersex as individual classes or group classes, should any person be discriminated against under the rules, practices and norms of the law then, the Government would not hesitate to act.

**Marriage and family relations**

64. Islam allows men to enter into a polygamous marriage. However safeguards have been put in place to ensure that polygamous practice does not cause injustice to women, and the legislature has enacted procedures to regulate and administer polygamous marriage.

65. The Technical Committee on Syariah and Civil Laws has established a Working Committee to Improve Islamic Family Laws (the Working Committee). The Working Committee sets the aim of reviewing the Islamic family law, including laws relating to solemnizing polygamous marriage. The Working Committee has recommended a detailed suggestion on the need to include interpretation of the word '*adil*' as appeared as one of the requirements that qualify a man to contract a polygamous marriage.

66. Amendments to the laws have been made from 2004 to 2009 relating to granting of orders for jointly acquired property and maintenance of the wives and children in polygamous marriage. These amendments serve as a protection of rights of wives in such marriage. Furthermore, such orders can as well function as an injunction against disposing of jointly acquired property.

67. For further protection of the rights of women in polygamous marriage, further amendment to sections 23(4) and (5) of the Islamic Family Law (Federal Territories) Act 1984 (IFLA) was recently made. This amendment puts a duty on the Syariah Court to require the attendance of not only the applicant, but also the existing wife or wives, the bride-to-be and her *wali* or any individual as the Syariah Court deems necessary for the purpose getting information so that justice can be served on the parties involved. The new law also casts stricter regulations on the sustainability of the applicant to support the existing wives and the children and future family financially and physically.

68. On receipt of the application, the Court shall summon the applicant and his existing wife or wives to be present at the hearing of the application, which shall be in camera, and the Court may grant the permission applied for if satisfied:

(a) That the proposed marriage is just and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;

(b) That the applicant has such means as to enable him to support as required by *Hukum Syara'* all his wives and dependants, including persons who would be his dependants as a result of the proposed marriage;

(c) That the applicant would be able to accord equal treatment to all his wives as required by *Hukum Syara'*.

69. In order to prevent polygamous marriage contracted without the permission of the Syariah Court, section 123 of the IFLA provides that it is an offence for committing polygamy without the permission of the Syariah Court. The statistics have recorded 9,233 cases of prosecution on men accused of committing polygamous marriage without Syariah Court's permission from 2010 to 2016.

70. Section 128 of Act 303 further provides that it is an offence for acting unfairly against any wife under a polygamous marriage.

71. The Islamic Family Law Act/Enactment passed in several states in Malaysia provides that the wife is entitled to *fasakh* (dissolution of marriage) on the grounds of unequal treatment of the wives by the husband. For example, subparagraph 52 (1) (h) (vi) of the IFLA grants the right to the wives of a polygamous marriage to file an application for *fasakh* on the grounds of unfair treatment by the husband.

72. Therefore, the existing provisions of Islamic family laws clearly guarantee and protect the rights of women in polygamous marriage.

73. Parliament on 22 August 2017 passed amendments to the Law Reform (Marriage and Divorce) Act 1976 (LRA) to address issues arising out of the conversion to Islam of one party to a marriage solemnized under the LRA such as the dissolution of marriage, maintenance, custody of the children born out from the civil marriage and distribution of property.

74. The amendment provides the converting spouse with the right to file a petition for divorce to dissolve his civil marriage under subsection 51 (1) of the LRA. Currently, the law only gives this right to the spouse who has not converted to Islam.

75. The amendments to the LRA which is in conformance with article 16 (1) (c) of the Convention are as follows:

(a) Amendments to subsections 3 (3) and 51 (1) enabling a party in a marriage who has converted to Islam, or both parties, to present a petition for divorce;

(b) Insertion of a new section 51A ensuring that the next-of-kin of the person converting to Islam but who dies before the non-Muslim marriage is dissolved shall be entitled to the matrimonial assets.

76. If the Committee is concerned for parents who are not able to afford counsels, then the Government has provided legal aid through the National Legal Aid Foundation, for those who qualify. The Malaysia Bar Council also provides legal aid through the Bar Council Legal Aid Centre. The threshold or qualification is slightly higher than that set by the Government. Nonetheless, these measures are to ensure that a person's access to justice is provided.

**Optional protocol and amendment to article 20 (1) of the Convention**

77. The ratification of the Optional Protocol to the Convention and the acceptance of the amendment to article 20 (1) of the Convention is under policy consideration.